



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Romanian Chamber of Deputies for its opinion on the Commission proposals of 16 September 2011 for a Regulation of the European Parliament and the Council on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis {COM(2011) 559 final}; for a Regulation of the European Parliament and the Council amending Regulation (EC) No 562/2006 (the Schengen Borders Code) in order to provide for common rules on the temporary reintroduction of border controls at internal borders in exceptional circumstances {COM(2011) 560 final}; and the Communication from the Commission: Schengen governance - strengthening the area without internal border control {COM(2011) 561 final}.

In its Communication on Migration adopted in May 2011, the Commission set out the reasons why it considers it to be necessary to review the way in which we oversee the management of our external borders as well as the way in which internal border controls are temporarily reintroduced.

The basic starting point and objective of the Commission is that, since the Schengen area is a benefit shared by the whole EU, any decision affecting this benefit should be taken at EU level rather than by the Member States individually.

It should be noted that the legislative proposals which are the subject of the Chamber's opinion were adopted by the Commission on 16 September 2011 building on the Conclusions of the European Council in June. The purpose of the proposals is to strengthen the governance of the area without internal border controls (the Schengen area) and enable it to respond effectively to exceptional circumstances putting the overall functioning of Schengen cooperation at risk, without jeopardising the principle of free movement of persons.

At the centre of this remains a consideration which is crucial and recognised as such by all institutional actors at EU level: free movement of people in the Schengen area is one of the most important and tangible results of the EU integration process. Therefore, this achievement must be preserved and strengthened in an effective and credible way.

Ms. Roberta Alma ANASTASE
President
Chamber of Deputies
Palace of the Parliament
Str. Izvor nr. 2-4, sector 5
RO – BUCHAREST

The Commission welcomes the Chamber's positive opinion regarding its proposals. It has moreover taken note of the remarks made by the Chamber with regard to some of the specific provisions in the proposals, and would like to take this opportunity to respond to those remarks.

The Chamber's opinion notes that the specific procedure for cases of persistent serious deficiencies foreseen in the proposed changes to the Schengen Borders Code (Article 26) does not allow for the prolongation of the reintroduction of internal border controls of longer than 18 months beyond the initial six-month period, and considers that it should be possible to provide for longer extensions. The Commission accepts that unpredictable developments can occur which might, at least theoretically and in very exceptional circumstances, call for a decision on the reintroduction of internal border controls to be prolonged for even longer periods than those foreseen. However, the Commission considers that it would not be appropriate for a Regulation to allow for the indefinite prolongation of such decisions by the exercise of the implementing powers granted to the Commission via the comitology mechanism. Some limitation in time should be placed on such prolongations, and a two year limit would be appropriate in this regard. Consequently, any extension beyond that period would require the adoption of a distinct legislative instrument.

The Chamber's opinion considers that the proposals should enable deficiencies to be rectified in a gradual manner, noting that this may involve a major logistical and financial effort, as well as the active support of other Member States. The Commission can confirm that the proposals are indeed intended to allow for deficiencies to be resolved over a period of time that would be considered reasonable, bearing in mind the extent of the problems involved and the measures required to rectify them. The Member State concerned would first be required to draw up an Action Plan mapping out how it intends to resolve the problems identified, and it would be expected to then request whatever assistance might be necessary. It would only be as a last resort, in the exceptional circumstances where deficiencies persist, despite support measures being sought and/or deployed, and where the situation risks posing a serious threat to public policy or security, that the reintroduction of internal border controls might be contemplated.

The Chamber's opinion considers that Article 13(7) of the Schengen evaluation and monitoring mechanism proposal should be redrafted so as to make clear that the Commission can take action even in the absence of a request by a Member State. The Commission would note that this provision concerns a specific situation in which the Council and the European Parliament should be informed about serious deficiencies revealed by on-site visits, and that it allows for such information to be communicated either at the request of a Member State or upon the Commission's own initiative.

As regards the Chamber's opinion concerning the appropriateness of the Commission being empowered to decide on the reintroduction of internal border controls upon its own initiative, the Commission would like to point out that the proposed changes to the Schengen Borders Code would allow for the Commission to take such decisions, not only in situations of 'persistent serious deficiencies' in the application of the Schengen acquis (Article 26 of the Schengen Borders Code proposal), but also, as is clear from the wording of Article 24(3) of that proposal, in other circumstances where it considers that there is a serious threat to public policy or internal security at the Union or national level.

The Commission welcomes the strong support of the Romanian Chamber of Deputies for the objectives being pursued by the Commission proposals, and hopes that this reply addresses the specific issues raised in the opinion of the Chamber.

Yours faithfully,

*Maroš Šefčovič
Vice-President*